



General Assembly

Substitute Bill No. 6417

January Session, 2003

AN ACT CONCERNING STATE CONSTRUCTION CONTRACTS.

Be it enacted by the Senate and House of Representatives in General Assembly convened:

1 Section 1. Section 4b-91 of the general statutes is repealed and the
2 following is substituted in lieu thereof (*Effective January 1, 2004*):

3 (a) Every contract for the construction, reconstruction, alteration,
4 remodeling, repair or demolition of any public building for work by
5 the state, which is estimated to cost more than five hundred thousand
6 dollars, except (1) a contract awarded by the Commissioner of Public
7 Works for (A) a community court project, as defined in subsection (j) of
8 section 4b-55, (B) the Connecticut Juvenile Training School project, as
9 defined in subsection (k) of section 4b-55, (C) the downtown Hartford
10 higher education center project, as defined in subsection (l) of section
11 4b-55, (D) The University of Connecticut library project, as defined in
12 subsection (d) of section 4b-55, (E) a correctional facility project, as
13 defined in subsection (m) of section 4b-55, (F) a juvenile detention
14 center project, as defined in subsection (n) of section 4b-55, or (G) a
15 student residential facility for the Connecticut State University system
16 that is a priority higher education facility project, as defined in
17 subsection (f) of section 4b-55, or (2) a project, as defined in
18 subdivision (16) of section 10a-109c, undertaken and controlled by The
19 University of Connecticut in accordance with section 10a-109n, shall be
20 awarded to the lowest responsible and qualified general bidder who is
21 prequalified pursuant to section 3 of this act on the basis of

22 competitive bids in accordance with the procedures set forth in this
23 chapter, after the Commissioner of Public Works or, in the case of a
24 contract for the construction of or work on a building under the
25 supervision and control of the Joint Committee on Legislative
26 Management of the General Assembly, the joint committee or, in the
27 case of a contract for the construction of or work on a building under
28 the supervision and control of one of the constituent units of the state
29 system of higher education, the constituent unit, has invited such bids
30 by advertisements inserted at least once in one or more newspapers
31 having a circulation in each county in the state. The Commissioner of
32 Public Works, the joint committee or the constituent unit, as the case
33 may be, shall determine the prequalification classification and
34 aggregate work capacity rating required for the contract and shall
35 indicate the prequalification classification and aggregate work capacity
36 ratings in such advertisement. As used in this section, "prequalification
37 classification and aggregate work capacity rating" means the
38 prequalification classifications and aggregate work capacity ratings
39 established by the Commissioner of Administrative Services pursuant
40 to section 3 of this act.

41 (b) The Commissioner of Public Works, the joint committee or the
42 constituent unit, as the case may be, shall determine the manner of
43 submission and the conditions and requirements of such bids, and the
44 time within which the bids shall be submitted, consistent with the
45 provisions of sections 4b-91 to 4b-96, inclusive, as amended by this act.
46 Such award shall be made within sixty days after the opening of such
47 bids. If the general bidder selected as the general contractor fails to
48 perform the general contractor's agreement to execute a contract in
49 accordance with the terms of the general contractor's general bid and
50 furnish a performance bond and also a labor and materials or payment
51 bond to the amount specified in the general bid form, an award shall
52 be made to the next lowest responsible and qualified general bidder.
53 [If] No employee of the Department of Public Works, the joint
54 committee or a constituent unit with decision-making authority
55 concerning the award of a contract may communicate with any bidder

56 prior to the award of the contract if the communication results in the
57 bidder receiving information about the contract that is not available to
58 other bidders, except that if the lowest responsible and qualified
59 bidder's price submitted is in excess of funds available to make an
60 award, the Commissioner of Public Works, the Joint Committee on
61 Legislative Management or the constituent unit, as the case may be, [is
62 empowered to] may negotiate with such bidder and award the
63 contract on the basis of the funds available, without change in the
64 contract specifications, plans and other requirements. If the award of a
65 contract on said basis is refused by such bidder, the Commissioner of
66 Public Works, the Joint Committee on Legislative Management or the
67 constituent unit, as the case may be, may negotiate with other
68 contractors who submitted bids in ascending order of bid prices
69 without change in the contract, specifications, plans and other
70 requirements. In the event of negotiation with general bidders as
71 provided [herein] in this section, the general bidder involved may
72 negotiate with subcontractors on the same basis, provided such
73 general bidder shall negotiate only with subcontractors named on such
74 general bidder's general bid form.

75 (c) On and after January 1, 2004, no person may bid on a contract for
76 the construction, reconstruction, alteration, remodeling, repair or
77 demolition of any public building for work by the state or a
78 municipality, which is estimated to cost more than five hundred
79 thousand dollars and is paid for, in whole or in part, with state funds,
80 unless the person is prequalified in accordance with section 3 of this
81 act.

82 (d) On and after January 1, 2004, each bid submitted for such
83 contract shall include a copy of a prequalification statement issued by
84 the Commissioner of Administrative Services showing that the bidder
85 has the prequalification classification and aggregate work capacity
86 ratings required under such contract. The bid shall also be
87 accompanied by an update statement in such form as the
88 Commissioner of Administrative Services prescribes. The form for

89 such update statement shall provide space for information regarding
90 all projects completed by the bidder since the date the bidder's
91 prequalification certificate was issued, all projects the bidder currently
92 has under contract, including the percentage of work on such projects
93 not completed, the names and qualifications of the personnel who will
94 have supervisory responsibility for the performance of the contract,
95 any significant changes in the bidder's financial position or business
96 organization since the date the certificate was issued, and such other
97 relevant information as the Commissioner of Administrative Services
98 prescribes. Any bid submitted without a copy of the prequalification
99 certificate and an update statement shall be invalid.

100 (e) The bidder shall certify under penalty of false statement at the
101 conclusion of the bidding process that the information in the bid is
102 true, that there has been no substantial change in the bidder's financial
103 position or business organization since the bidder's most recent
104 prequalification certificate was issued, other than those changes noted
105 in the update statement, and that the bid was made without fraud or
106 collusion with any person.

107 (f) Any person who communicates with a public official or
108 employee concerning any construction, reconstruction, alteration,
109 remodeling, repair or demolition project on a public building prior to
110 the date that an advertisement for bids on the project is published shall
111 be disqualified from bidding on the project.

112 [(b)] (g) Notwithstanding the provisions of this chapter regarding
113 competitive bidding procedures, the commissioner may select and
114 interview at least three responsible and qualified general contractors,
115 and may negotiate with any one of such contractors a contract which is
116 both fair and reasonable to the state for a community court project, as
117 defined in subsection (j) of section 4b-55, the downtown Hartford
118 higher education center project, as defined in subsection (l) of section
119 4b-55, The University of Connecticut library project, as defined in
120 subsection (d) of section 4b-55, the Connecticut Juvenile Training
121 School project, as defined in subsection (k) of section 4b-55, a

122 correctional facility project, as defined in subsection (m) of section 4b-
123 55, a juvenile detention center project, as defined in subsection (n) of
124 section 4b-55, or a student residential facility for the Connecticut State
125 University system that is a priority higher education facility project, as
126 defined in subsection (f) of section 4b-55. Any general contractor
127 awarded a contract pursuant to this subsection shall be subject to the
128 same requirements concerning the furnishing of bonds as a contractor
129 awarded a contract pursuant to subsection (a) of this section.

130 Sec. 2. Section 4b-92 of the general statutes is repealed and the
131 following is substituted in lieu thereof (*Effective January 1, 2004*):

132 As used in this chapter and except as otherwise provided, the words
133 "lowest responsible and qualified bidder" shall mean the bidder who is
134 prequalified pursuant to section 3 of this act, and whose bid is the
135 lowest of those bidders possessing the skill, ability and integrity
136 necessary to faithful performance of the work based on objective
137 criteria considering past performance and financial responsibility.
138 Essential information in regard to such qualifications shall be
139 submitted with the bid in such form as the awarding authority may
140 require by specification in the bid documents and on the bid form.
141 Every general bid shall be accompanied by a bid bond or a certified
142 check in an amount which shall be ten per cent of the bid, provided no
143 such bid bond or certified check shall be required in relation to any
144 general bid in which the total estimated cost of labor and materials
145 under the contract with respect to which such general bid is submitted
146 is less than fifty thousand dollars. Failure to execute a contract
147 awarded as specified and bid shall result in the forfeiture of such bid
148 bond or certified check. In considering past performance the awarding
149 authority shall evaluate the skill, ability and integrity of bidders in
150 terms of the bidders' fulfillment of contract obligations and of the
151 bidders' experience or lack of experience with projects of the size of the
152 project for which the bids are submitted.

153 Sec. 3. (NEW) (*Effective January 1, 2004*) (a) As used in this section,
154 "prequalification" means prequalification issued by the Commissioner

155 of Administrative Services to bid on a contract for the construction,
156 reconstruction, alteration, remodeling, repair or demolition of any
157 public building for work by the state or a municipality.

158 (b) Any person may apply for prequalification to the Department of
159 Administrative Services. Such application shall be made on such form
160 as the Commissioner of Administrative Services prescribes and shall
161 be accompanied by a nonrefundable fee of one thousand five hundred
162 dollars. The application shall be signed under penalty of false
163 statement.

164 (c) The application form shall, at a minimum, require the applicant
165 to supply information concerning:

166 (1) The applicant's form of organization;

167 (2) The applicant's principals and key personnel;

168 (3) The applicant's experience on public and private construction
169 projects over the past five years, or on the applicant's twenty most
170 recently-completed projects;

171 (4) Any legal or administrative proceedings pending against the
172 applicant or concluded adversely to the applicant within the past five
173 years which relate to the procurement or performance of any public or
174 private construction contract;

175 (5) The nature of any financial, personal or familial relationship
176 between the applicant and any public or private construction project
177 owner listed on the application as constituting construction experience;

178 (6) A statement of whether the applicant has been disqualified
179 pursuant to subsection (e) of section 4b-95 of the general statutes, as
180 amended by this act, or section 31-57c or 31-57d of the general statutes;
181 and

182 (7) Other information as the commissioner deems relevant to the
183 determination of the applicant's qualifications and responsibilities.

184 (d) The applicant shall include a statement of financial condition
185 prepared by a certified public accountant which includes information
186 concerning the applicant's assets and liabilities, plant and equipment,
187 bank and credit references, bonding company and maximum bonding
188 capacity, and other information as the commissioner deems relevant to
189 an evaluation of the applicant's financial capacity and responsibility.

190 (e) Information contained in the application shall be current as of
191 the time of filing except that the statement of financial condition shall
192 pertain to the applicant's most recently-completed fiscal year.

193 (f) Any materially false statement in the application or any update
194 statement may, in the discretion of the awarding authority, result in
195 termination of any contract awarded the applicant by the awarding
196 authority and shall constitute cause for disqualifying the applicant
197 pursuant to this section and subsection (e) of section 4b-95 of the
198 general statutes, as amended by this act. The awarding authority shall
199 provide written notice to the commissioner of such false statement not
200 later than thirty days after discovering such false statement. The
201 commissioner shall provide written notice of such false statement to
202 the Commissioner of Public Works not later than thirty days after
203 discovering such false statement or receiving such notice.

204 (g) The commissioner shall evaluate each applicant on the basis of
205 the application and on relevant past performance according to
206 procedures and criteria set forth in regulations which the
207 commissioner shall adopt, in accordance with chapter 54 of the general
208 statutes. Such criteria shall include, at a minimum, the record of the
209 applicant's performance, including, but not limited to, written
210 evaluations of the applicant's performance on public or private projects
211 within the past five years, the applicant's prior experience on projects
212 of various size and type, the experience and qualifications of
213 supervisory personnel employed by the applicant, the maximum
214 amount of work the applicant is capable of undertaking as
215 demonstrated by the applicant's financial condition, bonding capacity,
216 size of past projects and present and anticipated work commitments,

217 and any other relevant criteria that the commissioner prescribes.

218 (h) Such regulations shall also (1) provide that the criteria
219 considered shall be assigned separate designated numerical values and
220 weights and that the applicant shall be assigned an overall numerical
221 rating on the basis of all criteria, and (2) establish prequalification
222 classifications and aggregate work capacity ratings. Such
223 prequalification classifications shall be used to establish the types of
224 work a contractor is qualified to perform and the aggregate work
225 capacity ratings shall be used to establish the maximum amount of
226 work a contractor is capable of undertaking.

227 (i) The commissioner may not issue a prequalification certificate to
228 any contractor who has been disqualified pursuant to subsection (e) of
229 section 4b-95 of the general statutes, as amended by this act, or section
230 31-57c or 31-57d of the general statutes.

231 (j) The applicant shall indicate the classifications and aggregate
232 work capacity rating for which prequalification is sought. The
233 commissioner may issue a certificate of prequalification to any
234 applicant that meets the requirements of this section. Such certificate
235 shall be effective for one year from the date issued and shall indicate
236 the contractor's classifications and aggregate work capacity ratings.
237 The commissioner may renew such certificate upon receipt of a
238 nonrefundable fee of five hundred dollars, a completed update
239 statement and any other material the commissioner requires.

240 (k) The commissioner shall notify an applicant of the
241 commissioner's preliminary determination regarding the conditions of
242 the prequalification certification, a denial of certification, a reduction in
243 the level of certification or a revocation or nonrenewal of certification.
244 Any applicant aggrieved by the division's preliminary determination
245 may request copies of the information upon which the commissioner
246 relied in making the preliminary determination provided such request
247 is made not later than five days after receiving notice. Not later than
248 ten business days after receiving notice the applicant may submit

249 additional information to the commissioner with a request for
250 reconsideration. The commissioner shall issue a final determination
251 regarding the application not later than thirty business days after the
252 date of the commissioner's preliminary determination unless the
253 applicant agrees to an extension of time.

254 (l) Upon receiving additional information regarding a contractor's
255 qualifications, the commissioner may revoke a contractor's
256 prequalification or reduce the contractor's prequalification
257 classification or aggregate work capacity ratings.

258 (m) The provisions of this section and section 4 of this act shall not
259 apply to subcontractors.

260 (n) The commissioner shall establish an update statement for use by
261 bidders for certificate renewal purposes and for purposes of
262 submitting a bid pursuant to section 4b-91 of the general statutes, as
263 amended by this act.

264 (o) Any applicant aggrieved by the commissioner's final
265 determination concerning a preliminary determination, a denial of
266 certification, a reduction in the level of certification or a revocation or
267 nonrenewal of certification may appeal to the Superior Court in
268 accordance with section 4-183 of the general statutes.

269 (p) Documents submitted to the commissioner in an application
270 pursuant to this section shall not be deemed to be public records under
271 the Freedom of Information Act, as defined in section 1-200 of the
272 general statutes.

273 Sec. 4. (NEW) (*Effective January 1, 2004*) (a) The Commissioner of
274 Administrative Services shall establish a standard contractor
275 evaluation form. Each public agency, as defined in section 1-200 of the
276 general statutes, shall complete and submit the form to the
277 commissioner after completion of a building project under the agency's
278 control if the building project is funded, in whole or in part, by state
279 funds. The commissioner shall include the evaluation in the

280 contractor's prequalification file. The official from the public agency, or
281 a designee, or the architect or engineer responsible for the oversight of
282 the project, shall certify that the information contained on the
283 contractor evaluation form represents, to the best of the official's,
284 architect's or engineer's knowledge, an accurate analysis of the
285 contractor's performance record on the project. The official, architect or
286 engineer shall mail the evaluation form to the contractor. Any
287 contractor who wishes to contest any information contained in the
288 evaluation form may submit a written response to the commissioner
289 not later than thirty days after the date the form was mailed as
290 indicated by the postmark on the envelope. Such response shall set
291 forth any additional information concerning the building project or the
292 oversight of the contract by the public agency that may be relevant in
293 the evaluation of the contractor's performance on the contract. The
294 commissioner shall include any such response in the contractor's
295 prequalification file.

296 (b) Upon fifty per cent completion of any building project under a
297 public agency's control, the agency shall advise the contractor in
298 writing of the agency's preliminary evaluation of the contractor's
299 performance on the project.

300 (c) Any public agency that fails to complete and submit a contractor
301 evaluation form required by this section, or any written response by
302 any contractor, to the commissioner within seventy days of the
303 completion of a project shall be ineligible to receive public funds from
304 the state for the purpose of any construction, reconstruction, alteration,
305 remodeling, repair or demolition of a public building.

306 (d) Documents submitted to the commissioner in an evaluation
307 pursuant to this section shall not be deemed to be public records under
308 the Freedom of Information Act, as defined in section 1-200 of the
309 general statutes.

310 Sec. 5. Subsection (e) of section 4b-95 of the general statutes is
311 repealed and the following is substituted in lieu thereof (*Effective*

312 *January 1, 2004*):

313 (e) Any general contractor who violates any provision of this section
314 or section 9-333n, as amended by house bill 6096 of the current session,
315 shall be disqualified from bidding on other contracts that are subject to
316 the provisions of this chapter for a period not to exceed twenty-four
317 months, commencing from the date on which the violation is
318 discovered, for each violation. The commissioner may disqualify a
319 general contractor from bidding on such contracts for a period not to
320 exceed twenty-four months commencing from the date the
321 commissioner receives notice from the Commissioner of
322 Administrative Services or the awarding authority of any materially
323 false statement in the general contractor's application for
324 prequalification submitted pursuant to section 3 of this act or any
325 update statement. The awarding authority shall periodically review
326 the general contractor's subcontracts to insure compliance with such
327 provisions, and shall after each such review prepare a written report
328 setting forth its findings and conclusions.

329 Sec. 6. Subsection (m) of section 1-84 of the general statutes is
330 repealed and the following is substituted in lieu thereof (*Effective*
331 *January 1, 2004*):

332 (m) No public official or state employee shall knowingly accept,
333 directly or indirectly, any gift, as defined in subsection (e) of section 1-
334 79, from any person the official or employee knows or has reason to
335 know: (1) Is doing business with or seeking to do business with the
336 department or agency in which the official or employee is employed;
337 [or] (2) is engaged in activities which are directly regulated by such
338 department or agency; or (3) is prequalified under section 3 of this act
339 and the official or employee has decision-making authority over the
340 award of contracts for the construction, reconstruction, alteration,
341 remodeling, repair or demolition of any public building. No person
342 shall knowingly give, directly or indirectly, any gift or gifts in violation
343 of this provision.

344 Sec. 7. (NEW) (*Effective January 1, 2004*) (a) Not later than January 1,
345 2004, and semiannually thereafter, each awarding authority shall
346 prepare a report on the status of (1) any ongoing project for the
347 construction, reconstruction, alteration, remodeling, repair or
348 demolition of any public building which is estimated to cost more than
349 five hundred thousand dollars, or (2) any property management
350 contract awarded by the Department of Public Works which has an
351 annual value of one hundred thousand dollars or more. The awarding
352 authority shall submit the report to the Governor and the joint
353 standing committees of the General Assembly having cognizance of
354 matters relating to government administration and finance, revenue
355 and bonding. The report shall be submitted in accordance with section
356 11-4a of the general statutes. The first report submitted after a contract
357 is awarded shall indicate: (A) When, where and how the request for
358 bids was advertised; (B) who bid on the projects; (C) if there was any
359 deviation from standard procedure in awarding the contract; (D) the
360 names of the individuals who had decision-making authority in
361 awarding the contract, including, but not limited to, the individuals
362 who served on any awarding panel; (E) if an awarding panel was used,
363 whether the recommendation of the panel was followed and, if
364 applicable, the reason why such recommendation was not followed;
365 and (F) whether the awarding authority has any other contracts with
366 the contractor who was awarded the contract, and if so, the nature and
367 value of the contract.

368 (b) Each report shall also include information on the number of
369 projects under the awarding authority's control, the project costs,
370 timeliness of completion and any problems that have developed in
371 implementation.

372 Sec. 8. Section 4b-100 of the general statutes is repealed and the
373 following is substituted in lieu thereof (*Effective January 1, 2004*):

374 (a) Not later than July 1, 2004, the Commissioner of Public Works
375 shall adopt regulations, in accordance with chapter 54, to implement
376 the procedures set forth in sections 4b-91 to 4b-100, inclusive, as

377 amended by this act.

378 (b) The Commissioner of Public Works shall adopt regulations, in
 379 accordance with the provisions of chapter 54, establishing a procedure
 380 for promptly hearing and ruling on claims alleging a violation or
 381 violations of sections 4b-91 to 4b-100, inclusive, as amended by this act.
 382 Such claims may be initiated by the Department of Public Works or
 383 any party whose financial interests may be affected by the decision on
 384 such a claim.

385 Sec. 9. (NEW) (*Effective January 1, 2004*) (a) There shall be established
 386 within the Department of Public Works a Construction Services Award
 387 Panel which shall consist of five members: Three of whom shall be
 388 appointed by the Commissioner of Public Works and shall be current
 389 employees of the Department of Public Works; and the remaining
 390 members shall be appointed by the head or acting head of the user
 391 agency and shall serve only for deliberations involving the project for
 392 which such member was appointed. The members of the selection
 393 panel appointed by the Commissioner of Public Works shall serve for
 394 terms of one year from July first. If any vacancy occurs on the panel,
 395 the Commissioner of Public Works or the head or acting head of the
 396 user agency, as appropriate, shall appoint a person for the unexpired
 397 term in accordance with the provisions of this subsection.

398 (b) The panel established pursuant to subsection (a) of this section
 399 shall not be deemed to be a board or commission within the meaning
 400 of section 4-9a of the general statutes. Such panel shall be the selection
 401 panel for any contract for the construction, reconstruction, alteration,
 402 remodeling, repair or demolition of any public building pursuant to
 403 sections 4b-91 to 4b-100, inclusive, of the general statutes, as amended
 404 by this act.

This act shall take effect as follows:	
Section 1	<i>January 1, 2004</i>
Sec. 2	<i>January 1, 2004</i>
Sec. 3	<i>January 1, 2004</i>

Sec. 4	<i>January 1, 2004</i>
Sec. 5	<i>January 1, 2004</i>
Sec. 6	<i>January 1, 2004</i>
Sec. 7	<i>January 1, 2004</i>
Sec. 8	<i>January 1, 2004</i>
Sec. 9	<i>January 1, 2004</i>

GAE *Joint Favorable Subst.*

JUD *Joint Favorable*

FIN *Joint Favorable*